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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 KENNETH GLEN HUNTER, )

9 Petitioner, )

10 vs. )

11 CHARLES L. RYAN et al., )

12 Respondents. )

No. CIV 09-47-TUC-CKJ

**ORDER**

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14 Pending before the Court is the Petition for Writ of Habeas Corpus by a Person in  
15 State Custody Pursuant to 28 U.S.C. § 2254 (“Petition”) filed by Kenneth G. Hunter  
16 (“Hunter”). Respondents have filed an Answer and Hunter has filed a reply. Also pending  
17 before the Court is Hunter’s Declaration for Entry of Default Judgment (Doc. 20); a response  
18 has been filed.

19 *Factual and Procedural Background*

20 The Court of Appeals of Arizona summarized the factual background as follows:

21 . . . The victim had left his car engine on as he filled his tires at a convenience store  
22 gas station when a man entered the car and began to drive it away. The victim  
23 attempted to stop the vehicle by running in front of it, but the thief drove the car  
toward the victim so he had to jump out of the way to avoid being hit.

24 Hunter’s girlfriend testified that she and Hunter had walked to the convenience store  
25 to buy a drink, that she had gone into the store and used the restroom, but that when  
she came out about ten minutes later, Hunter was gone. As she left the store, she  
26 noticed “confusion” and a man “wondering where his car was.” A few hours later,  
Hunter arrived at her apartment with the victim’s car, claiming that he had rented it.

27 Another witness testified that she had seen a man and woman approach the  
28 convenience store and linger near the victim’s car, watching it. The witness saw the  
woman walk toward the store and the man enter the car and drive away, nearly hitting

1 the victim. Hunter was arrested a few days later, after a sheriff's deputy noticed him  
2 trying to pry open the window of the victim's car in a parking lot.

3 Answer, Ex. A, pp. 2-3; *see* 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an  
4 application for a writ of habeas corpus by a person in custody pursuant to a judgment of a  
5 State court, a determination of a factual issue made by a State court shall be presumed to be  
6 correct. The applicant shall have the burden of rebutting the presumption of correctness by  
7 clear and convincing evidence."); *Wainright v. Witt*, 469 U.S. 412, 426, 105 S.Ct. 844, 83  
8 L.Ed.2d 841 (1985) (state court's findings are entitled to a presumption of correctness).

9 Hunter was convicted of burglary in the third degree, theft by means of transportation  
10 by control, and aggravated assault with a deadly weapon or dangerous instrument by a jury  
11 in CR-20011998. In CR-20012488, Hunter pleaded guilty to aggravated assault of a peace  
12 officer and endangerment. The trial court sentenced Hunter to concurrent, aggravated terms  
13 of 3 years imprisonment for burglary, 7 years imprisonment for theft of means of  
14 transportation, and 15 years imprisonment for aggravated assault. Hunter filed an appeal, and  
15 on May 10, 2005, the Arizona Court of Appeals denied his appeal on the merits. Hunter did  
16 not seek review of that decision.

17 Hunter then sought post-conviction relief on July 28, 2006. In the initial and two  
18 supplemental petitions that followed, Hunter invoked the following grounds for relief: 1)  
19 Hunter's due process and fair trial rights were violated when the trial court did not strike the  
20 entire jury panel following an allegation of juror misconduct, 2) newly discovered material  
21 facts that would have changed the verdict, 3) Hunter's due process rights were violated by  
22 witness testimony elicited under duress, 4) pre-sentence report was inaccurate, 5) ineffective  
23 assistance of appellate counsel who did not file a petition for review to the Supreme Court  
24 of Arizona, and 6) trial counsel was ineffective in 6 ways: (a) he reported a security violation  
25 by Hunter to courthouse security personnel, (b) counsel failed to show Hunter crime scene  
26 photographs, (c) counsel did not properly impeach state witness at trial, (d) counsel did not  
27 file several of Hunter's *pro se* motions, even though Hunter directed him to file them, (e)  
28 counsel did not offer evidence at trial that Hunter owned two vehicles and was employed for

1 10 years prior to his offenses, and (f) counsel conspired with the State to secure Hunter's  
2 conviction.

3 The post-conviction court found the first claim precluded under state law because  
4 Hunter had litigated that claim on direct appeal. The post-conviction court denied the balance  
5 of Hunter's claims on the merits. Hunter then sought review from the Arizona Court of  
6 Appeals. On November 14, 2008, that court granted review, but denied relief. Hunter did not  
7 seek review of that decision.

8 On January 2, 2009, Hunter filed the pending Petition for Writ of Habeas Corpus by  
9 a Person in State Custody Pursuant to 28 U.S.C. § 2254 ("Petition"). Respondents have filed  
10 an answer and Hunter filed a reply.

11 On February 3, 2012, Hunter filed a Declaration for Entry of Default (Doc. 20). A  
12 response has been filed.

13  
14 *Declaration for Entry of Default*

15 Hunter appears to be requesting entry of default judgment because of Respondents'  
16 delay in filing an Answer and the lack of a ruling on Hunter's claims. Entry of default is not  
17 appropriate on such bases. Fed.R.Civ.P. 55 (entry of default when respondent has failed to  
18 plead or otherwise defend). The Court will deny the request.

19  
20 *Statute of Limitations*

21 This Court must review claims consistent with the provisions of the Antiterrorism and  
22 Effective Death Penalty Act of 1996 ("AEDPA"). Under the AEDPA, a state prisoner must  
23 generally file a petition for writ of habeas corpus within one year from the latest of:

24 (A) the date on which the judgment became final by the conclusion of direct review  
25 or the expiration of the time for seeking such review;

26 (B) the date on which the impediment to filing an application created by State action  
27 in violation of the Constitution or laws of the United States is removed, if the  
applicant was prevented from filing by such State action;

28 (C) the date on which the constitutional right asserted was initially recognized by the  
Supreme Court, if the right has been newly recognized by the Supreme Court and

1 made retroactively applicable to cases on collateral review; or

2 (D) the date on which the factual predicate of the claim or claims presented could  
3 have been discovered through the exercise of due diligence.

4 28 U.S.C. § 2244(d)(1); *Shannon v. Newland*, 410 F.3d 1083 (9th Cir. 2005).

5 The other subsections not being applicable, Hunter must have filed his habeas petition  
6 within one year from “the date on which the judgment became final by the conclusion of  
7 direct review or the expiration of the time for seeking such review.” 28 U.S.C. §  
8 2244(d)(1)(A). Hunter’s judgment became final on June 9, 2005. *See* Answer, Ex. A, and  
9 *discussion infra*. Therefore, the one year limitations period started running on June 9, 2005,  
10 giving Hunter one year from that date (in the absence of tolling) to file a federal habeas  
11 corpus petition. Hunter filed the instant habeas corpus petition on January 22, 2009. Thus,  
12 absent statutory or equitable tolling, Hunter’s habeas petition would be clearly outside the  
13 AEDPA statute of limitations.

14 *Statutory Tolling of Limitations Period*

15 In order to qualify for statutory tolling of the limitations period, Hunter must properly  
16 file an “application for State post-conviction or other collateral review with respect to the  
17 pertinent judgment or claim.” *See* 28 U.S.C. § 2244(d)(2). The statute of limitations is tolled  
18 while that application is “pending.” *See id*; *see also Pace v. Diguglielmo*, 544 U.S. 408, 409,  
19 125 S.Ct. 1807, 1808, 161 L.Ed.2d 669 (2005). Hunter filed a petition for State post-  
20 conviction relief on July 28, 2006. The proceedings for that petition ended on November 14,  
21 2008. Thus, Hunter is entitled to tolling of the period between the above dates as his petition  
22 for post-conviction relief was “pending.” However, the one year limitation is not tolled  
23 between the time a conviction becomes final in state court and the time that post-conviction  
24 relief or collateral attack is initiated, as there is no case “pending” in that time interval. *Nino*  
25 *v. Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999); *see also Ferguson v. Palmateer*, 321 F.3d  
26 820, 823 (9th Cir.2003) (holding that “section 2244(d) does not permit reinitiation of the  
27 limitations period that has ended before the state petition was filed.”); *Porter v. Ollison*, 620  
28

1 F.3d 952, 958 (9th Cir. 2010). If a petitioner does not seek review from the State's highest  
2 court, his conviction becomes final after the time for seeking such review elapses. 28 U.S.C.  
3 § 2244(d)(1)(A); *see also Hemmerle v. Schriro*, 495 F.3d 1069, 1073-74 (9th Cir. 2007);  
4 *Wixom v. Washington*, 264 F.3d at 898. The time to seek review from the state's highest  
5 court is determined by state law. *Wixom*, 264 F.3d at 898. In Arizona, a petitioner has 30  
6 days to seek review from the Arizona Supreme Court of a decision issued by the Arizona  
7 Court of Appeals. Ariz. R. Crim. P. 31.19(a).

8 Here, Hunter sought review from the Arizona Court of Appeals and that court  
9 affirmed Hunter's convictions and sentences on May 10, 2005. Because Hunter did not seek  
10 review from the Arizona Supreme Court, his conviction became final 30 days after the  
11 Arizona Court of Appeals' decision; that day was June 9, 2005. Thus, the AEDPA one year  
12 statute of limitations started running on June 9, 2005. (*See* 28 U.S.C. § 2244(d)(1)(A)).  
13 Hunter filed a petition in state court for post-conviction relief on July 28, 2006, which was  
14 49 days after the one year AEDPA limitation ran. The state-court post-conviction  
15 proceedings ended on November 14, 2008, and Hunter filed the federal habeas corpus  
16 petition on January 22, 2009. This placed his petition another 69 days outside the one year  
17 statute of limitations. Overall, Hunter's habeas corpus petition is 118 days late and no  
18 statutory tolling applies to those days.

19  
20 *Equitable Tolling of Limitations Period*

21 The United States Supreme Court has determined that 28 U.S.C. § 2244(d) "is subject  
22 to equitable tolling in appropriate cases." *Holland v. Florida*, — U.S. —, 130 S.Ct. 2549,  
23 2560, 177 L.Ed.2d 130 (2010). Tolling is appropriate when "extraordinary circumstances"  
24 beyond a petitioner's control make it impossible to file a petition on time. *Id.* at 2562; *see*  
25 *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir.2002) ("the threshold necessary to trigger  
26 equitable tolling [under AEDPA] is very high, lest the exceptions swallow the rule" (citation  
27 omitted and brackets in original)). "When external forces, rather than a petitioner's lack of  
28 diligence, account for the failure to file a timely claim, equitable tolling of the statute of

1 limitations may be appropriate.” *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir.1999); *see*  
2 *also Harris v. Carter*, 515 F.3d 1051, 1054-57 (9th Cir. 2008). Further, a petitioner must  
3 also demonstrate that he pursued his rights diligently in the state courts. *Pace*, 544 U.S. at  
4 418.

5 Because the threshold for equitable tolling is very high, the Ninth Circuit Court of  
6 Appeals applies this doctrine only sparingly. *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008,  
7 1011 (9th Cir. 2009); *Miranda*, 292 F.3d at 1066 (“the threshold necessary to trigger  
8 equitable tolling [under the AEDPA] is very high, lest the exceptions swallow the rule”).  
9 Thus, a petitioner has a “heavy burden” to prove: “(1) that he has been pursuing his rights  
10 diligently, and (2) that some extraordinary circumstance stood in his way.” *Chaffer v.*  
11 *Prosper*, 592 F.3d 1046, 1048 (9th Cir. 2010) *quoting Pace*, 544 U.S. at 418.

12 The determination whether factors exist that suggest “extraordinary circumstances”  
13 is highly fact-intensive and district courts are best suited to evaluate the legal significance  
14 of those factors. *Whalem/Hunt v. Early*, 233 F.3d 1146, 1148 (9th Cir. 2000) (en banc) (per  
15 curiam). Not only must Hunter show some factors that amount to “extraordinary  
16 circumstances,” but he must also establish that those factors proximately caused his  
17 untimeliness. *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009). Although a *pro se*  
18 petitioner bears the burden of substantiating an equitable tolling claim with evidence, district  
19 courts should not impose “extraordinarily high evidentiary standards” on *pro se* petitioners  
20 in order to ensure their fair access to the courts. *Lott v. Mueller*, 304 F.3d 918, 924 (9th Cir.  
21 2002); *see also Carjasso v. Ayers*, 278 F.3d 874, 877-78 (9th Cir. 2002) (holding that the  
22 district court erred in rejecting Carjasso’s petition due to a technical error on the cover sheet).

23 In this case, Hunter has the burden of showing that: 1) he pursued his rights diligently,  
24 and 2) that some extraordinary circumstance stood in his way. *Pace*, 544 U.S. at 418. Hunter  
25 claims three legally cognizable grounds that could potentially entitle him to equitable tolling  
26 but only provides some evidence for one of them. The alleged grounds are: attorney  
27 negligence in failing to initiate post-conviction relief on Hunter’s behalf within the AEDPA  
28 one year limitation, “constant” transfer from one penal institution to another, and lack of

1 access to law library materials. Hunter provides some evidence only for the first ground; he  
2 provides an affidavit from his former attorney, Patrick Coppen, who represented him in state  
3 court, in which the attorney acknowledges that he was negligent and did not file Hunter's  
4 request for post-conviction relief within the one year AEDPA limitations period.  
5 Nonetheless, attorney negligence in filing timely petitions is not sufficient for equitable  
6 tolling. *Maples v. Thomas*, — U.S. —, 132 S.Ct. 912, 923 (2012) ("the Court recognized [in  
7 *Holland*] that an attorney's negligence, for example, miscalculating a filing deadline, does  
8 not provide a basis for tolling a statutory time limit"); *Porter*, 620 F.3d at 959; *see also*  
9 *Randle v. Crawford*, 604 F.3d 1047, 1058 (9th Cir. 2010); *Spitsyn v. Moore*, 345 F.3d 796,  
10 800 (9th Cir. 2003); *Frye v. Hickman*, 273 F.3d 9944 (9th Cir. 2001). Attorney negligence  
11 would not toll the limitations period regardless whether such negligence that resulted in a  
12 missed deadline occurred during representation at the post-conviction relief stage in state  
13 court or in federal court. *See Randle*, 604 F.3d at 1058 (holding that to the extent that  
14 counsel's negligence in filing timely petitions in state court resulted in petitioner's missing  
15 a deadline in federal court also, counsel's negligence in miscalculating deadlines for habeas  
16 petitions does not constitute "extraordinary circumstance" that would trigger equitable  
17 tolling); *see also Holland*, 130 S.Ct. at 2564 (attorney negligence, as opposed to  
18 abandonment, does not provide a basis for tolling). Moreover, the Supreme Court has  
19 determined that attorney negligence in miscalculating deadlines is not sufficient for equitable  
20 tolling especially at the post-conviction stage in which there is no constitutional right to  
21 counsel. *Lawrence v. Florida*, 549 U.S. 327, 336-37, 127 S.Ct. 1079, 1085, 166 L.Ed.2d 924  
22 (2007); *see also Miranda*, 292 F.3d at 1063 (holding that Miranda's reliance upon his  
23 attorney's erroneous advice regarding the proper date to file a habeas corpus petition did not  
24 trigger the application of equitable tolling).

25 Only in cases in which the attorney's conduct is particularly "egregious," such  
26 conduct may constitute an "extraordinary circumstance" that would justify equitable tolling.  
27 *See Spitsyn*, 345 F.3d at 801 (attorney's conduct was found "egregious" where he utterly  
28 failed to prepare and file a habeas petition and where he refused to return his client's file



1 until two months after the statute of limitations ran); *see also Porter*, 620 F.3d at 960  
2 (attorney's conduct was egregious where the attorney was running a "writ mill" by filing  
3 over 50 petitions for habeas corpus while not preparing or respecting deadlines for any of  
4 them and where he held on to petitioner's file despite the latter's repeated requests for it).  
5 Here, based on the affidavit provided by Hunter's attorney, one could conclude that the  
6 attorney was negligent in pursuing Hunter's case, but the facts presented do not suggest that  
7 his conduct was "egregious." The attorney stated that he had some health problems that  
8 prevented him from responsibly discharging his duty to Hunter. He also states that the delay  
9 in filing Hunter's post-conviction relief claim was due to some filing error as "no calendaring  
10 of the required filing was ever done." Hunter provides no other evidence to suggest  
11 egregious conduct. For example, he does not claim that his attorney refused to release his  
12 file thus preventing him from pursuing his petition on his own. The Court finds that the  
13 attorney's conduct here does not present an extraordinary circumstance.

14 Hunter lists other factors that might rise to the level of "extraordinary circumstances,"  
15 but does so only in a conclusory manner and provides no evidence to show that the factors  
16 existed or that they proximately caused his tardiness. Hunter claims that he was "constantly"  
17 moved from one penal institution to another; he also claims lack of access to the law library.  
18 Although he provides a copy of a notice of change of address, that notice is dated March 5,  
19 2010, long after the statute of limitations expired. Hunter does not provide any dates or time  
20 intervals for other alleged transfers, nor does he provide any dates or time intervals in which  
21 he had no access to law library materials. Even if the Court were to consider that a search  
22 on the Arizona Department of Corrections website shows that Hunter was  
23 reclassified/admitted once during the year leading up to the statutory filing deadline of June  
24 9, 2006, this transfer alone would not warrant a finding of extraordinary circumstances.<sup>1</sup> In  
25 cases where prison transfers and lack of access to the law library materials were considered

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27 <sup>1</sup>The Court notes that the Arizona Department of Corrections website indicates that  
28 Hunter was reclassified/admitted on February 21, 2006. This reclassification/admission may  
mean that Hunter was transferred on this date.



1 “extraordinary circumstances” petitioners provided proof of the transfers, such as prison logs  
2 showing the time period and the reason for transfer or for lack of access to the library. *See*  
3 *Lott*, 304 F.3d at 921 (holding that petitioner’s transfer from a prison to another could be  
4 “extraordinary circumstance” where petitioner provided a copy of the prison log that showed  
5 two transfers, and an affidavit from an employee of the prison he was transferred to,  
6 supporting his claim that he had no access to his file for the transfer period); *see also*  
7 *Ramirez*, 571 F.3d at 998 (holding that petitioner’s lack of access to any library materials  
8 during a period of segregation that followed an inmate attack could constitute “extraordinary  
9 circumstance” for the purpose of equitable tolling). Given the common restrictions of the  
10 day-to-day prisoner activity, regular limitations on access to library materials would not  
11 constitute “extraordinary circumstances” that would trigger equitable tolling considerations.  
12 *Id.* at 998. Indeed, in *Hendon v. Walker*, 278 Fed.Appx. 762 (9th Cir. 2008), the court found  
13 a petitioner’s argument was insufficient to warrant equitable tolling where he asserted that  
14 his use of the law library was restricted and he was physically unable to file any habeas  
15 petitions. Hunter has provided no details as to how his access to legal materials was limited.

16 In his reply, Hunter also asserts that his lack of knowledge of the time limits warrants  
17 a finding of equitable tolling. However, Hunter’s lack of familiarity with the law does not  
18 constitute extraordinary circumstances sufficient to toll the limitations period. *Rasberry v.*  
19 *Garcia*, 448 F.3d 1150, 1154 (9th Cir.2006) (affirming denial of equitable tolling because  
20 neither the district court’s failure to advise the petitioner of the right to amend his petition to  
21 include unexhausted claims nor petitioner’s inability to correctly calculate the limitations  
22 period were extraordinary circumstances warranting equitable tolling); *Ballesteros v. Schriro*,  
23 CV-06-675-PHX-EHC (MEA), 2007 WL 666927 (D.Ariz., February 26, 2007) (noting that  
24 a petitioner’s pro se status, ignorance of the law, lack of representation during the applicable  
25 filing period, and temporary incapacity do not constitute extraordinary circumstances), *citing*  
26 *Fisher v. Johnson*, 174 F.3d 170, 714-15 (5th Cir.1999). “[I]t is well established that  
27 ‘ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse  
28

1 prompt filing.” *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir.2000), *quoting Fisher v.*  
2 *Johnson*, 174 F.3d 710, 714 (9th Cir.1999).

3 Furthermore, this Court finds that Hunter has not shown that he diligently pursue his  
4 claim. Indeed, Hunter does not claim, nor does he provide any evidence showing, that he  
5 tried to pursue his claim on his own given his counsel’s negligence. *See e.g. Holland*, 130  
6 S.Ct. at 2565 (district court was incorrect in finding lack of diligence where petitioner wrote  
7 numerous letters to attorney seeking information, repeatedly contacted courts, clerks, and  
8 state bar association in attempt to have attorney removed from case, and prepared *pro*  
9 *se* petition immediately upon learning attorney had missed deadline). Hunter had one year  
10 after his conviction became final in state court to pursue his habeas corpus petition. Thus,  
11 Hunter had enough time to find another attorney or to file a petition for post-conviction relief  
12 on his own. It is Hunter’s burden to establish equitable tolling and he has not provided  
13 enough evidence to show that he is entitled to equitable tolling. Hunter has failed to meet  
14 the “very high threshold,” *United States v. Battles*, 362 F.3d 1195, 1197 (9th Cir. 2004), of  
15 establishing that extraordinary circumstances beyond his control made it impossible for him  
16 to timely file a habeas petition *and* that those extraordinary circumstances were the cause of  
17 his untimeliness. Rather, it appears that Hunter’s lack of diligence caused his failure to meet  
18 the AEDPA’s one year statute of limitations. *See Miles*, 187 F.3d at 1107 (equitable tolling  
19 is only appropriate where “external forces, rather than a petitioner’s lack of diligence,  
20 account for the failure to file a timely claim”).

21 The Court finds that Hunter has failed to establish that he is entitled to equitable  
22 tolling. Hunter’s habeas petition, therefore, is untimely.<sup>2</sup>

23  
24 *Certificate of Appealability (“COA”)*

25 Rule 11(a), Rules Governing Section 2254 Cases, requires that in habeas cases the

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26  
27 <sup>2</sup>The Court notes that the Answer presents additional arguments against the Petition.  
28 Because the Court has determined that the Petition is untimely, the Court declines to address  
the additional arguments.

1 “district court must issue or deny a certificate of appealability when it enters a final order  
2 adverse to the applicant.” Such certificates are required in cases concerning detention arising  
3 “out of process issued by a State court”, or in a proceeding under 28 U.S.C. § 2255 attacking  
4 a federal criminal judgment or sentence. 28 U.S.C. § 2253(c)(1). Here, the Petition is  
5 brought pursuant to 28 U.S.C. § 2254, and challenges detention pursuant to a State court  
6 judgment. This Court must determine, therefore, if a COA shall issue.

7 The standard for issuing a COA is whether the applicant has “made a substantial  
8 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district  
9 court has rejected the constitutional claims on the merits, the showing required to satisfy §  
10 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would  
11 find the district court's assessment of the constitutional claims debatable or wrong.” *Slack*  
12 *v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). “When the district  
13 court denies a habeas petition on procedural grounds without reaching the prisoner's  
14 underlying constitutional claim, a COA should issue when the prisoner shows, at least, that  
15 jurists of reason would find it debatable whether the petition states a valid claim of the denial  
16 of a constitutional right and that jurists of reason would find it debatable whether the district  
17 court was correct in its procedural ruling.” *Id.* In the certificate, the Court must indicate  
18 which specific issues satisfy the showing. *See* 28 U.S.C. § 2253(c)(3).

19 This Court has determined that the Petition is untimely under one-year statute of  
20 limitations of the Antiterrorism and Effective Death Penalty Act and that the Petition is not  
21 subject to statutory or equitable tolling. The Court finds that jurists of reason would not find  
22 it debatable whether the Petition stated a valid claim of the denial of a constitutional right and  
23 the Court finds that jurists of reason would not find it debatable whether the district court was  
24 correct in its procedural ruling. A COA shall not issue as to Hunter's claims.

25 Any further request for a COA must be addressed to the Court of Appeals. *See* Fed.  
26 R.App. P. 22(b); Ninth Circuit R. 22-1.

27 Accordingly, IT IS ORDERED:

28 1. Hunter's Declaration for Entry of Default (Doc. 20) is DENIED.

2. Hunter's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 is DENIED;

3. This matter is DISMISSED with prejudice, and;

4. The Clerk of the Court shall enter judgment and shall then close its file in this matter.

DATED this 15th day of March, 2012.

*Cindy K. Jorgenson*  
Cindy K. Jorgenson  
United States District Judge